

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: June 10, 2005

To: The Commission
(Meeting of June 16, 2005)

From: Delaney L. Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **SB 1068 (Escutia) Telecomm: Consumer Protections.**
As Amended April 27, 2005

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: Oppose

SUMMARY: SB 1068 would require the Public Utilities Commission (PUC), by July 1, 2006, to develop and enforce telephone consumer protection rules that are substantially similar to the provisions of G.O. 168 (the Telecommunications Consumer Bill of Rights), which was stayed in January of this year (D.05-01-058) with the stated intention of resolving these issues by the end of 2005.

DIVISIONAL ANALYSIS (Telecomm):

A. Initial comments:

- Currently, a Bill of Rights for telecommunications consumers is pending Commission action. Commissioner Kennedy recently issued a draft ACR on the Bill of Rights, and the CPUC expects to complete the current phase of its work by year-end 2005. Thus, it would be improper for the PUC to support legislation on this issue.
- Additionally, SB 1068's expressed intent to "establish consumer protections that are at a minimum, as protective as those originally adopted by the commission in Decision 04-05-057" may be difficult to measure, and therefore may result in litigation.

- Also of note, SB 1068's July 1, 2006 deadline for CPUC compliance is six months longer than the Commission's own year-end deadline for consideration of the same issues.

B. SB 1068 as compared to D.04-05-057 / G.O. 168 (the Telecommunications Consumer Bill of Rights):

SB 1068:

- incorporates, almost verbatim, the 7 rights listed in Part 1 (Bill of Rights) of G.O. 168, including:
 - a consumer's right to personal privacy. (In D.04-05-057, the CPUC deferred adopting rules on privacy until a later date because it was somewhat controversial. In the reconsideration/ stay of D.04-05-057, the CPUC has not yet addressed how it will handle the issues deferred in D.04-05-057, including privacy rights.)
- proposes to codify highlights of each rule in Part 2 (Consumer Protection Rules) of G.O. 168, but:
 - makes more explicit the requirement that specified disclosures be in the same language used to advertise the product or service, upon the customer's request, and
 - requires "the express consent of the customer," rather than 25 days notice, for any changes to a customer's contract.
- proposes to codify highlights of Part 4 (Rules Governing Billing for Non-Communications-Related Charges) of G.O. 168.
- omits codification of anything from Part 5 (Rules Governing Slamming Complaints) of G.O. 168.

C. Comm. Kennedy's draft ACR (5/2/05) distinguished from SB 1068 & G.O. 168:

Commissioner Kennedy's draft ACR establishes *freedom of choice* as the most important consumer protection.

- Kennedy's draft Bill of Rights: In addition to the rights listed in SB 1068 and G.O. 168, Commissioner Kennedy's draft ACR also includes:
 - The right to select the voice service you want and have that choice respected.

- The right to access lawful content over the Internet without interference from a broadband provider.
 - The right to purchase broadband services without being forced to buy local calling service from the broadband provider.
 - The right to keep your local phone number when you change voice service providers.
 - The right to receive clear and complete information about limitations on service, including upload and download speeds, applications, security or equipment.
 - The right to personal and financial security.
 - The right to receive clear and complete information about access to 911 emergency services.
- Kennedy's draft Consumer Protection Rules:
 - A. The draft ACR does not include the following rules set forth in proposed PUC section 905(d) in SB 1068 (which follows G.O. 168) beyond the general rights set forth in the draft ACR's Bill of Rights:
 - 905(d)(1): Telephone corporations must publish rates, terms and conditions for services on Internet Web sites.
 - 905(d)(2): Telephone corporations shall make no misleading statements about rates and services.
 - 905(d)(3): Customer's may cancel new service or contract within 30 days.
 - 905(d)(4): Disclosures shall be provided in the same language as the advertising at the request of the customer.
 - 905(d)(5): Ads for pre-paid cards must disclose any geographic limitation, minimum charges, expiration policies, and relevant fees or surcharges.
 - 905(d)(6): Rules governing deposits to establish or reestablish service and deposit refunds.
 - 905(d)(7): Telephone corporations' billing statements shall separately list "government fees and taxes."
 - 905(d)(8): Telephone corporations shall credit payments the same day received, and may only back-bill according to specified criteria.

- 905(d)(9): Telephone corporations shall not change a customer's contract without the express consent of the customer. (G.O. 168 only requires 25 days notice.)
- 905(d)(10): Telephone corporations shall not terminate service without giving the customer 7 days written notice.
- 905(d)(11): Telephone corporations shall investigate and resolve billing disputes within 30 days, and may not charge late fees or penalties during that time.

B. The draft ACR differs from the following rules set forth in proposed PUC section 905(d) in SB 1068 (which follows G.O. 168) as follows:

- 905(d)(12): Telephone corporations shall provide all documents and information requested by the Consumer Affairs Branch *within 10 business days of the request*.
- 905(d)(13): Telephone corporation employees' ID cards must *use a distinctive format and have a photo of the employee. Employees must present the card when requesting entry, and must ID themselves whenever a customer asks.*
- 905(d)(14): All carriers and *voice service providers* shall provide access to 911 emergency service to the extent permitted by technology.

- Kennedy's draft Rules Governing Billing for Non-Communications-Related Charges:

For the most part, Commissioner Kennedy's draft ACR duplicates G.O. 168, and is in accord with SB 1068 on this issue, except that the draft ACR removes the "Definitions" section in its entirety as well as certain enforcement provisions.

- Kennedy's draft Rules Governing Slamming of Complaints:

For the most part, Commissioner Kennedy's draft ACR duplicates G.O. 168, except that the draft ACR removes certain enforcement provisions. (SB 1068 does not address slamming.)

PROGRAM BACKGROUND: In May 2004, the CPUC passed D.04-05-057 and G.O. 168 establishing consumer protection rules for telecommunications services. In January 2005, the CPUC stayed D.04-05-057 and G.O. 168 until further action by the commission with respect to implementation, broader policy, viability and enforcement issues. In the stay decision (D.05-01-058), the CPUC stated its' intention to resolve

these issues by the end of 2005.

OTHER STATES' INFORMATION:

- Most states have deferred action on this issue until some fundamental jurisdictional issues are resolved.
- Minnesota passed legislation in 2004 which imposed requirements on wireless carriers only. Minnesota's version was similar to California Telecommunications Bill of Rights Section 8B, which required notice of contract changes to wireless customers. The wireless industry has filed suit in federal court challenging Minnesota's jurisdiction on this matter and this litigation is pending.
- The National Association of State Utility Advocates (NASUCA) filed a petition before the FCC to eliminate or regulate junk fees on telecommunications bills. The FCC denied the petition but in its denial decision issued a Notice of Proposed Rulemaking on whether or not state regulation of wireless carriers is preempted by Federal Law.
- New York state has pending legislation sponsored by the AARP.
- Washington, D.C. has passed a consumer bill of rights that applies to energy and telecommunications. It is similar, but not as comprehensive, as the California version.

FISCAL IMPACT: The fiscal impact on the CPUC would be nominal since the CPUC has been proceeding with consumer protections similar to those in these two bills and had anticipated meeting enforcement requirements with existing personnel.

ECONOMIC IMPACT: No economic impact is anticipated.

STATUS: Awaiting hearing in the Assembly Utilities & Commerce Committee.

SUPPORT/OPPOSITION:

Support: (Verified 4/27/05)

AARP California
Asian Law Caucus
California Alliance For Consumer Protection
California Small Business Association
Canal Alliance

Chinese for Affirmative Action
Chinese Newcomers Service Center
Community Technology Policy Council
Consumer Federation of California
Lao Family Community Development Inc.
Latino Issues Forum
Little Tokyo Service Center
Office of the Attorney General
The Utility Reform Network
Utility Consumers' Action Network

Opposition: (Verified 4/27/05)

CTIA - The Wireless Association
California Broadcasters Association
California Chamber of Commerce
California Manufacturers and Technology Association
California Retailers Association
Cingular Wireless
Cricket Communications
Los Angeles Economic Development Corporation
Nextel Communications
San Diego Telecom Council
Sprint Communications Company
T-Mobile
Verizon Wireless

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Date: June 10, 2005

BILL LANGUAGE:

BILL NUMBER: SB 1068 AMENDED
BILL TEXT

AMENDED IN SENATE APRIL 27, 2005
AMENDED IN SENATE MARCH 30, 2005

INTRODUCED BY Senators Escutia and Bowen
(Coauthors: Senators ~~Alarcon~~ -
~~and Figueroa~~ Alarcon, Alquist,
Ashburn, Dunn, Figueroa,
Kuehl, and Speier)

FEBRUARY 22, 2005

An act to add Article 11 (commencing with Section 905) to Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

SB 1068, as amended, Escutia. Telecommunications: consumer protection.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Pursuant to existing law, the commission adopted a general order applicable to all commission-regulated telecommunications utilities known as the telecommunications consumers' Bill of Rights.

This bill would state the intent of the Legislature to establish consumer protections that are at a minimum, as protective as those originally adopted by the commission in the telecommunications consumers' Bill of Rights. The bill would require that the commission, by July 1, 2006, develop and enforce consumer protection rules for telecommunications service, including mobile telephony services, as defined, that achieve certain policies and meet specified requirements. The bill would additionally require that the commission, by July 1, 2006, develop and enforce consumer protection rules for charges for noncommunications services on telephone corporation billings, that meet specified requirements.

Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime.

Certain provisions of this bill would be part of the act and an order or other action of the commission would be required to implement certain of the provisions. Because a violation of the bill's provisions or of an implementing order or decision of the commission would be a crime, this bill would impose a state-mandated local program by creating new crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Article 11 (commencing with Section 905) is added to Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 11. Telecommunications Bill of Rights

905.

(a) It is the intent of the Legislature to establish consumer protections that are at a minimum, as protective as those originally adopted by the commission in Decision 04-05-057.

(b) For purposes of this section, the following terms have the following meanings:

(1) "Mobile telephony services" means commercially available interconnected mobile phone services that provide access to the public switched telephone network (PSTN) via mobile communication devices employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR). "Mobile telephony services" does not include mobile satellite services or mobile data services used exclusively for the delivery of nonvoice information to a mobile device.

(2) "Contract" means an agreement to supply products or perform services for compensation, and includes a customer service agreement for tariffed services.

(c) The commission shall, by July 1, 2006, develop and enforce consumer protection rules for telecommunications service, including mobile telephony services, that achieve all of the following policies:

(1) A consumer has a right to receive clear and complete information about rates, terms, and conditions for available products and services, and to be charged only according to the rates, terms, and conditions to which the consumer has agreed. This includes the right to receive available contracts and disclosures in the same language as used in the marketing of the product or service.

(2) A consumer has a right to select services and vendors, and to have the consumer's choices respected by telecommunications service providers.

(3) A consumer has a right to personal privacy, to be protected from unauthorized use of the consumer's records and personal information, and to reject intrusive communications and technology.

(4) A consumer has a right to participate in public policy proceedings, to be informed of his or her rights and what agencies enforce those rights, and to have effective recourse if his or her rights are violated.

(5) A consumer has a right to accurate and understandable bills for products and services authorized by the consumer, and to fair, prompt, and courteous redress for problems the consumer encounters.

(6) A consumer has the right to be treated equally with all other similarly situated consumers, free of prejudice or disadvantage.

(7) A consumer has a right to safety and security of person and property.

(d) The rules adopted by the commission pursuant to subdivision (c) shall include all of the following requirements:

(1) A telephone corporation shall disclose its rates, terms, and conditions of service and, upon request, provide its customers with a complete explanation of the charges comprising the customer's bill.

A telephone corporation shall publish, and keep current on an Internet Web site, the rates, terms, and conditions for services it offers for services for which it currently has customers.

(2) A telephone corporation shall make no statement about rates and services that is deceptive, untrue, or misleading.

(3) (A) A customer may cancel, without termination fees or penalties, any new service or contract for service within 30 days after the new service or contract for service is initiated.

(B) A telephone corporation shall provide a customer with written confirmation of every order for service and a written copy of each contract between the telephone corporation and the customer.

(C) A contract for service may not incorporate other information by reference, except where the referenced information is provided in a separate document provided simultaneously with the contract.

(D) A written confirmation shall include the rates, terms, and conditions of service, including the customer's right to cancel the service within 30 days.

(4) A telephone corporation shall provide a contract to a customer and make the disclosures required pursuant to paragraphs (1) and (2) in the same language used to advertise the product or service, upon the customer's request.

(5) Every advertisement of the price, rate, or unit value of a prepaid calling card or prepaid calling service shall include a disclosure of any geographic limitation on the advertised price, any minimum charges, any expiration policies, and any relevant fees or surcharges. If any language other than English is used in the advertising or promotion of the prepaid calling card or prepaid calling service the disclosure shall be in that language.

(6) A telephone corporation may not require a deposit to establish or reestablish service unless a customer is unable to demonstrate acceptable credit. No deposit imposed by a telephone corporation may exceed twice the estimated monthly bill for basic service. Every deposit shall be refunded after one continuous year of timely payments for basic service by the customer, and not later than 30 days after basic service is discontinued.

(7) Every telephone corporation billing statement shall be clearly organized and contain a clear and concise description of the product or service for which the charges are imposed. Every billing statement may only contain charges for products and services which have been authorized by the customer. All mandated government taxes, surcharges, and fees required to be collected from customers and to be remitted to federal, state, or local governments shall be separately listed and identified as "government fees and taxes." This section of the billing shall not include any charges for which the telephone corporation is not required to remit the moneys to the government.

(8) A telephone corporation shall credit payments effective the business day payments are received by the telephone corporation or its agent. No billing shall include any previously unbilled charge for intrastate service furnished more than three months immediately preceding the date of the billing, except that the billing may include roaming charges for mobile telephony services on a system other than the subscriber's home system for up to four months immediately preceding the date of the billing, and the billing may include charges for collect, third-party, and calling card calls for up to the five months immediately preceding the date of the billing. Telephone corporations shall prorate charges for basic service for partial months. Billings shall be based on the rates in effect at the time the service was used.

(9) A telephone corporation shall not change a customer's contract

in a way that results in higher rates or more restrictive terms or conditions without the express consent of the customer.

(10) A telephone corporation shall provide written notice to any customer whose payments are overdue not less than seven calendar days prior to terminating service for nonpayment. Basic exchange service may not be disconnected on any day that telephone corporation representatives are not available to assist customers.

(11) A telephone corporation shall investigate a customer billing dispute and reach a determination and communicate that determination to the customer within 30 days. During the investigation of the customer billing dispute, no late charge or penalty may be collected from the customer, the charge in dispute may not be sent to collection, and no adverse credit report may be filed as to the customer. Disputes shall be resolved pursuant to California law and the forum for adjudication of disputes shall be the county in California in which the customer receives the billing or the customer's primary place of use of the service. A telephone corporation shall not hold customers liable for costs resulting from complaints before the commission, other agencies, or arbitrators.

(12) A telephone corporation shall designate one or more representatives to be available during regular business hours to accept Consumer Affairs Branch inquiries from the commission. The telephone corporation shall provide all documents and information requested by the branch.

(13) A telephone corporation shall issue an identification card to every employee who has occasion to enter the premises of customers on behalf of the telephone corporation. No telephone corporation shall misrepresent, or allow its employees to misrepresent, its association or affiliation with the corporation when soliciting or implementing the customer's agreement to purchase products or services.

(14) A telephone corporation shall provide every residential customer, and every mobile telephony handset that is technologically compatible with its system, with access to the 9-1-1 emergency dialing system regardless of whether an account has been established.

(e) The commission shall, by July 1, 2006, develop and enforce consumer protection rules for charges for noncommunications services on telephone corporation billings, that include all of the following:

(1) A telephone corporation billing may not contain noncommunications related charges unless the telephone corporation obtains the express written authorization of the customer and the telephone corporation uses a ~~Personal Identification Number~~ *personal identification number* (PIN) or other equally reliable security procedure approved by the commission, that is designed to prevent persons or entities other than the customer and individuals authorized by the customer, from placing charges.

(2) A telephone corporation shall take reasonable precautions to screen vendors and billing agents before agreeing to provide billing services for noncommunications related charges by the vendor or billing agent, in order to screen out unreliable or untrustworthy business entities.

(3) A telephone corporation shall not disconnect basic telephone service for nonpayment of noncommunications related charges.

(4) A telephone corporation shall separately identify all noncommunications related charges on every billing, with clear and concise descriptions of the product or service for which a charge has been imposed.

SEC. 2.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.